

APPEAL NO. 93113

On January 5, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding. The hearing officer approved attorney's fees of \$3,955.75 for claimant's attorney. Claimant appeals asserting that the attorney's fees, as noted below, are excessive and requests that the attorney's fees awarded by the hearing officer be substantially reduced.

DECISION

We affirm the decision on attorney's fees.

The hearing officer allowed a total of 29 hours of attorney time at the requested rate of \$125.00 per hour. Although not abundantly clear, it appears that the request for attorney's fees included two contested case hearings, both heard on the same day (January 5, 1993), one after the other. We will refer to the cases as 01, being the hearing contested by (employer) on the issue of an injury in the course and scope of employment and 02 being the hearing contested by Service Lloyds Insurance Company (carrier) on the issue of a preexisting condition as being the sole cause of claimant's present problems.

Claimant specifically contests the eight hours claimed and allowed by the hearing officer for the depositions of Drs. H, N and H for 02 and the deposition of JL for 01. Claimant contends the same questions were asked of all the doctors in case 02, regardless of whether they were cross questions or direct questions. Initially we would note that two hours for a deposition is reasonable. We take into consideration that the questions to the doctors were basically the same questions but we note that there was an additional question propounded on recross-examination in Dr. N's and Dr. H's depositions. We also note that the questions propounded to Dr. H, although covering the same general area covered in the cross questions to Dr. N and Dr. H, were somewhat different. Claimant suggests that a total of two hours (30 minutes each) for the four depositions is ample. We do not agree and find that the hearing officer did not abuse his discretion in awarding eight hours attorney's fee for four depositions.

Claimant alleges the 8.0 hours charged and allowed for document, depositions, medical and statement review are excessive for the reason that "[t]his is attorney's fourth application for payment regarding this claim. Attorney has already been paid for review of this claim." We have no information or documentation to support claimant's contention. It appears that the complained of application and order for attorney's fees includes both the 01 hearing and 02 hearing including time and expenses from 7/31/92 to 1/06/93 with the application submitted on 01/06/93. Claimant's attorney has not submitted any charges for the appeals filed on behalf of claimant on both cases. We find no abuse of discretion by the hearing officer in awarding eight hours attorney's fee for reviewing documents, depositions and medical records in two cases which were both factually and medically contested and complex.

Claimant further disputes the 9.0 hours charged for the two contested case hearings on January 5, 1993. Claimant alleges the cases lasted only 7.5 hours. The record we have is unclear exactly how long the hearings lasted on January 5th. The hearing officer is certainly in a much better position to determine the actual time spent in a CCH than is the Appeals Panel. In 02 the record reflects the hearing began at 2:35 p.m. on January 5th, but the record does not disclose when that hearing was completed on January 5th. Having no information on which to base a decision, we can only conclude that the hearing officer was aware of how long the hearing lasted when he awarded the attorney's fee.

The decision of the hearing officer is affirmed in all parts.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge